Legal Profession Amendment Bill.

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, and Minister Assisting the Premier on Citizenship) [4.36 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

This bill provides for a number of amendments to the *Legal Profession Act 1987*. These amendments relate to the discipline of the legal profession and are designed to improve the ease with which disciplinary matters may be prosecuted by the regulatory authorities.

These amendments are a very small part of a bigger picture. The Attorney General will be introducing a new legal profession bill for New South Wales in the spring session of Parliament.

To this end, Parliamentary Counsel and officers of the Attorney General's Department are presently working on a complete revision of the Legal Profession Act 1987. This rewrite will incorporate the National Legal Profession Model Laws, recently released by the Standing Committee of Attorneys General. It will also amend the complaints and discipline provisions to reflect the recommendations of the NSW Law Reform Commission's Report No 99, "Complaints against Lawyers: an interim report" and the recommendations contained in the Attorney General's Department's "Further Review of Complaints Against Lawyers".

In the meantime, the regulatory authorities have alerted the Attorney to a number of minor amendments that will provide immediate benefits by improving the ease with which disciplinary matters against misbehaving lawyers may be prosecuted. These should not be delayed just because more time is needed for the larger project.

I draw your attention in particular to provisions of this bill, which will reduce the ability of practitioners to delay or thwart disciplinary proceedings against them. Unfortunately, some practitioners will resort to every trick in the book when a complaint has been made against them.

Amendments to section 152 of the Act will provide that a notice requiring the co-operation by a practitioner with an investigation has been served on a practitioner if it has been posted to the address of the legal practitioner last notified to the Council. These amendments substantially implement Recommendation 13 of the Law Reform Commission Report No 99, which considered that the service requirements should be relaxed.

Recommendation 17 of the Law Reform Commission Report No 99 is addressed by amendments to sections 155 and 160 of the Act. These remove the requirement that a Council or the Commissioner can only reprimand a legal practitioner *with the practitioner's consent*. A new section (171N) is inserted to provide for appeals from the decision to reprimand, but, if the reprimand is upheld by the Tribunal, it becomes a public reprimand.

Amendments to section 171C ensure that whenever the Tribunal orders a public reprimand of a practitioner, both the order and the reasons for the reprimand will need to be published. A recent decision in the Administrative Decisions Tribunal decided that, where a disciplinary hearing had been held in private, it was not appropriate to publish the Tribunal's decision. The Attorney's firmly held view is that proceedings are held in private to protect the practitioner if the allegations against them are not upheld. Once the Tribunal has made a finding against a practitioner, there is no further justification for keeping the matter private.

A new section 167AA will provide that the Commissioner or Council may institute proceedings in the Tribunal at any time within 6 months after a decision to institute proceedings is made. The Bar Council has been finding that some of its prosecutions are complicated by parallel proceedings in other forums. The more generous time frame, and a power for the Tribunal to extend time, will ensure that defaulting practitioners do not "get off" on a technicality.

Similarly, new section 171, taken from the National Model Laws, will allow the Tribunal to order that a failure to observe a procedural requirement may be disregarded, if the parties have not been prejudiced by the failure. Giving the Tribunal power to rectify technical errors made by the regulatory authorities is sensible and pragmatic, particularly where the only consequence has been that the practitioner has been able to practice for longer than they would have otherwise.

New section 171U ensures that a breach of an undertaking made to the regulatory authorities by a practitioner is

capable of being unsatisfactory professional conduct or professional misconduct. This amendment implements Recommendation 20 in Law Reform Commission Report 99.

Three other amendments in this package are more in the nature of tidying up.

• Amendments to sections 3, 30 and 37 permit a Council, when issuing or renewing a practising certificate, to take into account evidence of an act of bankruptcy or a finding of guilt for an indictable or taxation offence which occurred prior to the practitioner's admission as a legal practitioner.

• New section 171F completes the implementation of Recommendation 36 in Law Reform Commission Report 99 by providing that *all* appeals from the Tribunal at first instance will lie to the Supreme Court only (and not the Appeal Panel of the Tribunal). This saves the parties going through one extra step on their way to the Supreme Court.
• Amendments to definitions in section 198L clarify that practitioners must not file *any* documents during proceedings relating to a claim for damages, unless the practitioner certifies that the claims or defences made have reasonable prospects of success. The new definitions will ensure that all filings, including further and amended pleadings, are caught by this requirement.

These amendments will facilitate successful prosecutions by the regulatory authorities, and play their part in maintaining the standards of conduct which the community expects of legal practitioners.

I commend the bill to the House.